IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.123 OF 2006

ALONG WITH

CIVIL APPLICATION NO.232 OF 2005

Dr.Abdul Khalique s/o.Abdul Latif ...Appellant

Versus

Mr.Abdul Aziz Abdul Majid & Ors. ...Respondents

.....

Mr.N.R.Bubna for Appellant.

Mr.Prashant D.Jadhav for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 20, 2006.

P.C.

1. Heard Counsel for the parties.

2. Essentially, three contentions have been raised before this Court to persuade me to admit the present Second Appeal. The first point was regarding Suit being barred by Law of Limitation. It was contended by the Advocate for the Appellant

that the finding recorded by both the Courts below on the said issue is perverse. It is not possible to accede to this submission. However, to reassure myself whether the Courts below have analysed the issue in correct perspective, I permitted the Advocate for the Appellant to point out relevant materials in that behalf. In the written statement, vague plea is taken that the Suit was barred by Law of Limitation. In Paragraph 8 of the written statement, it is asserted by the Appellant that the Suit ought to have been brought within twelve years from the date of possession of the Appellant. Even if the contents of Para 9 of the written statement which are pressed into service before this Court were to be accepted as it is, it is not possible to accede to the argument because no material fact is pleaded in the written statement as to the date from which the limitation would start running against the Respondent/Plaintiff. The Law of Limitation clearly postulates that limitation would start running when the possession of the Defendants becomes adverse to the plaintiffs and twelve years there from is available for filing of the Suit for

possession. In my opinion, no fault can be found with the concurrent view taken by the Courts below in answering the issue of limitation against the Appellant/Defendant.

3. To get over this position, Counsel for the Appellant would contend that the Trial Court has proceeded on the assumption that the Defendant's possession was adverse possession when no such plea was taken by the Plaintiff/Respondent herein. Some observation made by the Trial Court cannot be the basis to overturn the finding of fact on the issue of limitation. Generally, the approach of the Appellate Court in the impugned Judgment with regard to issue of limitation, is the correct approach. Therefore, this contention should fail.

4. The second argument canvassed before me is that the Suit was undervalued. It is contended that the Appellant had produced report of the valuer which would indicate that the value of the property on the date of institution of the Suit was around Rs.4,22,000/- (Rupees Four Lakhs Twenty-two Thousand), for which reason, the Trial Court had no

jurisdiction. Even this submission does not commend to me. The Court below has analysed the evidence of DW 6 and his report. The Court below has found as of fact that the evidence of D.W.6 cannot be the basis to rule against the Plaintiff. For that purpose, Court has considered several aspects as can be discerned from the Judgment of the Trial Court in Para 6 onwards and the Appellate Court in Para 7 onwards. The view taken by the Courts below on the said issue is also a possible view.

5. The third contention raised before this Court is that the Courts below have overlooked the evidence produced by the Appellant which will clearly indicate that the father of the Plaintiffs had executed document Exhibit 148 whereunder the title of the suit property has passed on to the Appellant. No such specific plea has been taken in the written statement. On the other hand, the Suit was contested on the basis that the Defendant is joint and equal owner of the suit property. As there is no specific plea taken in the written statement, which is now pressed into service, any

amount of evidence on the said plea even if brought on record will be of no avail. The Appellate Court has considered the efficacy of document Exhibit 148 in the impugned Judgment in Para 16 onwards. It has been fond that the document itself indicates that the Appellant/Defendant was aware that he has no interest or title in the suit house as it was owned by the father of the Plaintiff/Respondent alone.

6. In my opinion, no substantial question of law arises for consideration. Hence, dismissed.

A.M.KHANWILKAR, J.